

Message Text

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PAGE 01 KATHMA 02924 181140Z

46

ACTION NEA-16

INFO OCT-01 ISO-00 CPR-02 AID-20 IGA-02 L-03 IO-14 TRSE-00

OPR-02 A-01 M-02 ST-01 FBO-01 ABF-01 OMB-01 AGR-20

PC-04 CIAE-00 INR-11 NSAE-00 RSC-01 DODE-00 USIA-15

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FM AMEMBASSY KATHMANDU

TO SECSTATE WASHDC 8933

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E.O. 11652: N/A

TAGS: EAID, PFOR, NP, US

SUBJECT: CUSTOMS RESTRICTION ON FOREIGN ADVISORS

REF: STATE 150221; KATHMANDU 2803

1. ON JULY 15 ACTING AID DIRECTOR MURTHA AND CONTROLLER MILLER CALLED ON BAL GOPAL K.C., ACTING UNDER SECRETARY, MINISTRY OF FINANCE, TO DISCUSS PROPOSED GON ACTION TO RESTRICT PRIVILEGES FOR USAID EMPLOYEES. MURTHA GAVE GOPAL PAPER, BASED ON REFTEL A, ANALYZING LEGAL IMPLICATIONS OF PROPOSED GON ACTION. COPIES OF PAPER AND MEMCON BEING POUCHED LORTON AND COLES.

2. GOPAL SAID THAT GON HAD BEEN CONSIDERING NEW POLICY ON IMPORT PRIVILEGES FOR SOME TIME AND THAT POLICY HAD BEEN DISCUSSED WITH MINISTRIES OF LAW, FINANCE AND FOREIGN AFFAIRS. IT WAS EVIDENT FROM DISCUSSION THAT GON IS UNHAPPY WITH UNDP IN SENSE THAT GON BELIEVES THERE ARE TOO MANY UNDP ADVISORS IN NEPAL AND THAT UNDP PERSONNEL ARE ABUSING THEIR DUTY FREE PRIVILEGES. WHILE GON APPEARS MOST CONCERNED ABOUT RESTRICTING UNDP PRIVILEGES, GOPAL MADE IT CLEAR THAT GOVERNMENT WANTED TO APPLY PROVISIONS OF NEW POLICY EQUALLY TO ALL AID DONORS, BOTH BILATERAL AND MULTILATERAL. HE SAID THE GON WAS EAGER TO SEE NEPALIS PLACED IN

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PAGE 02 KATHMA 02924 181140Z

POSITIONS OF GREATER RESPONSIBILITY IN ALL AID MISSIONS. MURTHA

INDICATED THAT USAID HAS BEEN MOVING IN THIS DIRECTION, GAVE EXAMPLES AND ADVISED GOPAL THAT ADDITIONAL STEPS ARE BEING TAKEN TO PLACE MORE NEPALI STAFF IN POSITIONS OF GREATER RESPONSIBILITY.

3. MURTHA POINTED OUT THAT THERE WERE SEVERAL SERIOUS SHORTCOMINGS IN NEW PROPOSED POLICY, INCLUDING PROVISIONS TO DISCRIMINATE BETWEEN USAID STAFF AND ADVISOR EMPLOYEES, AND TO PLACE SIX-MONTH LIMITATION ON SHIPMENT OF HHE TO NEPAL. GOPAL INDICATED HE APPRECIATED THESE PROBLEMS AND MADE NOTE OF THEM FOR FURTHER DISCUSSION WITHIN GON. GOPAL ALSO STATED THAT USAID DIRECTOR WILL CONTINUE TO ENJOY ALL DIPLOMATIC PRIVILEGES PRESENTLY AFFORDED TO HIM AS MEMBER OF AMBASSADOR'S STAFF. GOPAL THEN RAISED ISSUE OF COMMISSARY, STATING THAT GON DOES NOT WISH TO CLOSE COMMISSARY, BUT THAT USAID EMPLOYEES WOULD BE REQUIRED TO UTILIZE COMMISSARY WITHIN FRAMEWORK OF NEW REGULATIONS WHEN THEY ARE PROMULGATED. GOPAL ASKED THAT USAID PROVIDE INFORMATION ON COST TO PROVIDE ADEQUATE SUPPLIES OF FOODSTUFFS, LIQUOR, ETC., FROM COMMISSARY FOR FAMILY OF FOUR. PARADOXICALLY, GOPAL REPEATED AT LEAST TWICE THAT GON DID NOT WISH TO GIVE LESS IN WAY OF PRIVILEGES THAN IS GIVEN TO USAID EMPLOYEES SERVING IN NEIGHBORING COUNTRIES SUCH AS INDIA AND BANGLADESH. MURTHA SHOWED GOPAL COPY OF INDIAN BILATERAL AND WILL PROVIDE COPIES OF OTHER BILATERALS TO GON AS THEY BECOME AVAILABLE.

4. USAID AND MINISTRY OF FINANCE DISCUSSIONS WERE FOLLOWED ON JULY 17 WITH CALL BY AMBASSADOR ON FOREIGN MINISTER KARKI TO DISCUSS ISSUE OF PRIVILEGES. REFERRING TO HIS LETTER OF JULY 10 TO FOREIGN MINISTER, AMBASSADOR SAID THAT WE HAD NOW RECEIVED INSTRUCTIONS FROM WASHINGTON, DIRECTING US TO CALL GON'S ATTENTION TO LEGAL IMPLICATIONS OF PROPOSED ACTION. DRAWING PRIMARILY ON REFTEL A, AMBASSADOR STATED THAT APPLICATIONS PROPOSED REGULATIONS TO AID MISSION DIRECTOR WOULD BE CONTRARY TO PROVISIONS OF VIENNA CONVENTION; THAT APPLICATION TO DIRECT-HIRE AID EMPLOYEES WOULD BE IN VIOLATION OF ARTICLE 4, SECTION 2 OF OUR 1951 BILATERAL AGREEMENT WITH NEPAL; AND THAT APPLICATION TO AID-FINANCED CONTRACTORS WOULD BE CONTRARY TO PROVISIONS CONTAINED IN AID LOAN AND GRANT AGREEMENTS AND PROAGS. AMBASSADOR LEFT WITH FOREIGN MINISTER SAME PAPER (BASED ON REFTEL A) SUMMARIZING LEGAL POINTS WHICH HAD BEEN EARLIER HANDED TO LIMITED OFFICIAL USE

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PAGE 03 KATHMA 02924 181140Z

FINANCE MINISTRY BY ACTING AID DIRECTOR. AMBASSADOR EMPHASIZED THAT WE WERE ANXIOUS TO HAVE FULL CONSULTATIONS ON ISSUE OF PRIVILEGES BEFORE GON TOOK ANY FINAL ACTION; THAT US HAS RIGHTS UNDER INTERNATIONAL AGREEMENTS WHICH SHOULD BE RESPECTED; AND THAT WE ARE READY AT ANYTIME TO DISCUSS ANY PROBLEMS WHICH GON BELIEVES IT HAS WITH PRIVILEGES IN RELATION TO USAID PERSONNEL AND TO SEEK REASONABLE SOLUTIONS.

5. FOREIGN MINISTER INDICATED THAT HE WAS AWARE OF POSSIBLE LEGAL PROBLEMS CONNECTED WITH PROPOSED GON ACTION AND THAT FOREIGN SECRETARY KHATRI, WHO WAS AT THAT MOMENT MEETING WITH OFFICIALS OF MINISTRY OF FINANCE ON SUBJECT OF PRIVILEGES, WAS ALSO AWARE OF LEGAL IMPLICATIONS. (FOREIGN MINISTER SAID THAT AFTER RECEIVING AMBASSADOR'S LETTER AND REALIZING DIFFICULTIES PROPOSED NEW REGULATIONS PRESENTED, HE HAD SENT THE LETTER TO FINANCE SECRETARY REQUESTING HIM TO PROVIDE BASIS FOR RESPONSE.) FOREIGN MINISTER SAID THAT HE DID NOT BELIEVE PROBLEM OF PRIVILEGES WAS A BIG ONE, AS LONG AS BOTH SIDES KEPT TALKING TO EACH OTHER, WHICH HE BELIEVED WAS MOST IMPORTANT ASPECT OF ISSUE. HE PROMISED TO KEEP EMBASSY INFORMED OF RESULTS OF DISCUSSIONS WITH MINISTRY OF FINANCE.

6. COMMENT: THUS FAR, GON HAS NOT PUBLISHED ANY NEW CUSTOMS REGULATIONS IN THE GAZETTE AS HAD BEEN FORECAST. WE BELIEVE GON IS A BIT EMBARRASSED OVER PRECIPITATE MANNER IN WHICH IT INITIATED ACTION WITHOUT REALIZING TOTAL IMPLICATIONS. IT IS EVIDENT THAT MINISTRY OF FOREIGN AFFAIRS IS AWARE OF ITS RESPONSIBILITIES IN RELATION TO TREATY OBLIGATIONS NEPAL HAS UNDERTAKEN. HOWEVER, WE EXPECT THAT GON WILL COME UP WITH MODIFIED PROPOSALS WHICH WE WILL HAVE TO CONSIDER FURTHER. MISSION APPRECIATES DEPARTMENT'S ASSISTANCE WITH REGARD NEPALESE EMBASSY AS REPORTED STATE 154818. CARGO

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